

Service Date: January 30, 1978

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

IN THE MATTER of the APPLICATION )  
by THE CITY OF BILLINGS for ) DOCKET NO. 6542  
authority to increase rates-for ) ORDER NO. 4399  
Billings water service. )

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ORDER DISCUSSING OBJECTIONS OF CITY OF BILLINGS  
TO CONDUCT OF A HEARING ON THE  
CITY'S INTERIM RATE INCREASE REQUEST

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FINDINGS OF FACT

1. On October 17, 1977, the Commission received the request of the City of Billings (CB) for a water rate increase projected to average \$1,636,000 per year for the period January, 1978, through June, 1980.
2. On December 22, 1977, the Commission received CB's Petition for an interim rate increase of \$1,311,000 or about 80% of the requested permanent rate increase. The Petition for interim increase had been authorized by an emergency resolution of the CB City Council, which resolution stated that the CB Water Utility was at that time incurring operating losses of approximately \$84,400.00 per month.
3. A notice of filing and of pre-hearing conference was published in the Billings Gazette in late December. The conference was scheduled for January 4, 1978, in Helena.
4. On December 23, 1978, the Commission received a letter

from Geoffrey L. Brazier, the Montana Consumer Counsel (MCC), objecting to a grant of an interim increase without opportunity for hearing, and moving the Commission to set the interim Petition for hearing.

5. On January 3, 1978, the interim Petition came before the Commission in the regular course of business at a scheduled agenda meeting. The Petition prompted extensive discussion among the Commissioners concerning the desirability of having a hearing on the interim request. The matter was deferred in order to permit staff counsel to discuss the interim question with counsel for the parties at the January 4, 1978, pre-hearing conference.

6. When the conference convened on January 4, a proposed procedural order prepared by staff counsel was discussed. Mr. Calton, appearing for CB; Mr. Thomas Kelley, appearing for the County Water District of Billings Heights; and Mr. Brazier all generally agreed on the procedures and timetable set forth in the proposed order.

7. Following discussion of the proposed procedural order, staff counsel discussed with the parties the history of the dispute between MCC and the Commission concerning the necessity of notice and hearing prior to the issuance of an interim rate order under R.C.M. 1947, Sec. 70-113. Although Mr. Brazier had sought to establish his viewpoint that notice and opportunity for hearing were required through the litigation process, it was explained that Judge Gordon Bennett of the First Judicial District Court had agreed with the Commission that notice and hearing were not required. Also discussed was the Commission's rulemaking proceeding dealing with MCC's proposed rules on temporary rate increases. A hearing on these rules had been conducted on

October 19, 1977, with further action pending. The rules, if adopted, would require the Commission to offer parties an opportunity for hearing on interim increase requests, and would specify four criteria, two of which the utility would have to be prepared to prove in order to justify its interim request. Although the procedural aspects of the rules would be binding "legislative" rules, the four criteria were noticed as "interpretive" rules, a non-exhaustive list of situations in which the Commission might be moved to exercise its discretion under Sec. 70-113, R.C.M. 1947. Sec. 82-4202(2).

8. Following the description of the hearing controversy, counsel discussed the possible format of a hearing on the interim, with a date in late January discussed as the likely time for a hearing. Mr. Brazier indicated that he would seek to cross-examine a witness who would know why the CB's permanent increase application had not been submitted earlier, alleviating the need for an interim increase. Also discussed was the presentation of evidence such as the items mentioned in the four criteria of the proposed rules, and of evidence quantifying and supporting the claimed deficit.

9. On January 5, 1978, the Commission issued a procedural order in this Docket in the form proposed by the staff. On the same day a hearing on the interim Petition was scheduled for January 23, 1978, in Helena.

10. On January 20, 1978, after notice of the January 23 hearing had been served upon the parties and distributed to the Billings news media, the Commission received CB's Objection to the conduct of any hearing on the City's interim Petition and a Memorandum in support of the Objection. Construing the Objection as a request by CB that the

scheduled hearing be discontinued, the Commission canceled the January 23 hearing without date. Because the Objection and supporting Memorandum contain numerous errors, misinformation and allegations of prejudice, the Commission feels compelled to address these documents. The remainder of this Order discusses the position and assertions of CB.

11. Generally, the concern expressed by CB about proceeding with a hearing on the interim request dealt with its lack of understanding of what the Commission desired in terms of evidence. The January 5, 1978, letter of staff counsel notifying parties of the Commission's intent to conduct a hearing indicated only that both an evidentiary proceeding and the entertainment of oral argument were contemplated. The parties were, for the most part, left to their own resources to develop the evidence and arguments they felt most likely to move the Commission's discretion.

12. CB's Objection indicated that, in the absence of established procedures to guide the presentation of evidence, any proceeding would necessarily be arbitrary and discriminatory. The Commission recognizes the absence of procedures and criteria observed by CB. Hopes that the 1977 Montana Legislature would precisely define the purpose and scope of interim increases proved vain. The rules advanced by MCC represent his attempt to fill this void, but have yet to be addressed by the Commission. Accordingly, the Commission is free to grant interim increases whenever it deems an increase justified. The evidentiary phase of the now canceled hearing was seen, in effect, as an opportunity for CB to attempt to persuade the Commission that an increase was justified by the facts of the City's financial situation, and to have appropriate witnesses available for questioning on the utility's financial condition.

13. CB's second objection was based upon an assumption that municipalities should be treated differently in regulatory proceedings than private utilities, since they are not profit-making entities. Although there may be some philosophical basis for this proposition, there is none in the statutes.

14. CB objected that if procedures requiring hearings on interim requests were not applied uniformly to all municipalities, CB was being singled out for arbitrary treatment. However, absent rules prescribing procedures, the Commission is free to seek whatever facts it feels appropriate to justify an increase. Every case presents different circumstances, and it seems obvious that some facts might more readily support a grant of an interim increase than others.

15. CB, in its fourth objection, cited a Billings Gazette article to support an assertion that Commissioner Schneider had prejudged the merits of the City's request, and perhaps was so biased as to be unable to give the City's evidence a fair hearing. Mr. Schneider's comments in fact were a simple observation that CB's requested \$1,311,000 temporary rate increase exceeded substantially the \$1,012,000 amount the City says would cover its operating deficit (\$84,400 X 12). The performance of this simple calculation hardly supports a charge of bias.

16. Finally, CB objects that its filing and related actions were premised on the remarks of a Commission spokesman to the effect that the Commission would be processing municipal water applications in two months. What the spokesman, Mr. Dennis Crawford, actually said, as a review of his address

shows, is that two months would be a target processing period for cases in which the proposed hearing procedure was followed and no protests to an application were received.

17. The Montana Consumer Counsel on January 24, 1978, filed the prepared direct testimony of Richard L. Morgan concerning CB's interim increase request. Counsel for CB has indicated to the Commission staff that the opportunity to see in advance the type of evidence MCC feels pertinent in an interim hearing has allayed some of his apprehensions about proceeding to hearing. The Commission regrets any confusion that has occurred in this case. In order to avoid further confusion, the Commission takes this opportunity to inform CB that it desires information on the amount of CB's deficit, and asks that witnesses be available to discuss the accounting procedures which produced the City's deficit calculations.

18. An attempt will be made to reschedule a hearing on the interim Petition for the week of February 6th.

#### CONCLUSION OF LAW

1. The Commission has authority to seek an evidentiary basis for the possible exercise of its authority under R.C.M. 1947, Sec. 70-113, to temporarily approve utility rate increases pending hearing.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION:

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GORDON E. BOLLINGER, Chairman

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P.J. GILFEATHER, Commissioner

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THOMAS J. SCHNEIDER, Commissioner

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JAMES R. SHEA, Commissioner

ATTEST:

Madeline L. Cottrill  
Commission Secretary  
(SEAL)

NOTICE: You are entitled to judicial review of this Order.  
Judicial review may be obtained by filing within  
thirty (30) days from the service of this Order a  
petition for review pursuant to Section 82-4216,  
R.C.M. 1947.